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No. 10-273

Supreme Court, U.S.
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In The

Supreme Court of the United States

PATRICK YOUNGS,

Petitioner,

v.

INDUSTRIAL CLAIM APPEALS OFFICE, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari To The Colorado Court Of Appeals

REPLY BRIEF

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

REASONS FOR GRANTING THE PETITION.... 1

Colorado is one of only four states where workers' compensation benefits are heard and determined in a separate agency 1

CONCLUSION..... 6

APPENDIX

Workers' Compensation Fifty-State Survey .....App. 1

TABLE OF AUTHORITIES

Page

CASE LAW

Aviado v. ICAO, 228 P.3d 177 (Colo. App. 2009) 5

Crowell v. Benson, 285 U.S. 22 (1932) 2, 3, 4, 6

Dee Enterprises v. ICAO, 89 P.3d 430 (Colo. App. 2003) 2, 4

Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982).....2, 3, 4, 6

State ex rel. Wyoming v. Halstead, 795 P.2d 760 (Wyo. 1990).....3

Thomas v. Union Carbide Agricultural Products Co., 473 U.S. 568 (1985).....2, 3, 4, 6

Three Affiliate Tribes v. World Engineering P.C., 467 U.S. 138 (1984) 5, 6

STATUTES

Colo. Rev. Stat. § 8-40-102 (2009) 4

REASONS FOR GRANTING THE PETITION

Respondents filed a brief in opposition in this matter that raised the issue of how all of the states handle workers' compensation. On page fourteen of the opposition brief, Respondents allege that most jurisdictions process workers' compensation cases in a certain manner. It was implied in the brief that most states process workers' compensation claims similar to the way Colorado processes workers' compensation claims. This reply brief is being filed to clarify how workers' compensation cases are determined across the United States.

Colorado is one of only four states where workers' compensation benefits are heard and determined in a separate agency.

The appendix contains a foldout chart that details how workers' compensation cases are determined throughout the fifty states. App. 1-7.

At the top of the analysis are five states where workers' compensation cases are only heard in the judicial branch. Those states are: Alabama, Oklahoma, Nebraska, Rhode Island and Tennessee. App. 1, 4, 5, 6. Five other states provide for de novo review by the judicial branch after the executive branch agency that regulates workers' compensation makes an initial determination: Maryland, Ohio, Texas (on issues regarding compensability or income or death

benefits), Vermont and Washington. App. 3, 5, 6. These ten states are well within the boundaries of the opinions of this Court regarding separation of powers. *Crowell v. Benson*, 285 U.S. 22 (1932); *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982); *Thomas v. Union Carbide Agricultural Products Co.*, 473 U.S. 568 (1985).

In the middle of the analysis are thirty-six states where workers' compensation benefits are determined by the agency that regulates workers' compensation, but the judicial review is less stringent than de novo review. App. 1-7. The *Crowell* Court did envision executive branch agencies being involved in workers' compensation matters to some extent, but provided for de novo review by the judicial branch. *Crowell*, 285 U.S. at 65. By failing to provide de novo review over workers' compensation, these thirty-six states do not comply with the holdings of this Court. *Crowell, Northern Pipeline, and Thomas, supra*. A state, however, can separate its powers as it sees fit. *Crowell*, 285 U.S. at 57. Therefore, the rulings by this Court do not necessarily affect the laws of these states. The rulings of this court do affect the law in Colorado, however, because Colorado follows federal law regarding separation of powers. *Dee Enterprises v. ICAO*, 89 P.3d 430, 435-437 (Colo. App. 2003).

At the bottom of the analysis are four states where workers' compensation benefits are determined

by an agency separate from the agency that determines workers' compensation. The states are: Colorado, Florida, Minnesota and Nevada. App. 1, 2, 4. These states do not comply with the holdings of this Court. *Crowell, Northern Pipeline, Thomas, supra.* In the forty-six other states, when a claim leaves the agency that regulates workers' compensation the claim goes to the judicial branch. In these four states, the claim leaves the agency that regulates workers' compensation and goes to a separate, independent executive branch agency that exercises a solely judicial function. This is a violation of the separation of powers doctrine. The judicial power is not incidental to the power exercised by the agency; the judicial power is the sole power within the agency. *See State ex rel. Wyoming v. Halstead*, 795 P.2d 760, 770-771 (Wyo. 1990) (Justice Rooney specially concurring in part and dissenting in part). Furthermore, the judicial branch review in these states is less stringent than de novo review. Respondents were incorrect to imply on page fourteen of the opposition brief that most states handle workers' compensation in the same manner that Colorado handles workers' compensation claims.

Colorado misinterpreted the holdings of this Court when it stated below that the holdings of this Court support Colorado's workers' compensation hearing process. The holdings of this Court do not support Colorado's workers' compensation process because 1) workers' compensation cases involve private rights that must be heard in the judicial

branch, 2) workers' compensation replaces the right to sue an employer that existed at common law and therefore workers' compensation must be heard in the judicial branch, and/or 3) if a matter leaves an executive branch agency for a hearing it must go to the judicial branch to be determined as opposed to a separate executive branch agency.

Respondents also make a clearly erroneous statement in the opposition brief. On page 11 of the brief they allege that the workers' compensation rights at issue here did not arise from common law. This statement is directly contrary to the holding of this Court:

> Most importantly, the statute in *Crowell* displaced a traditional cause of action and affected a pre-existing relationship based on a common-law contract for hire. Thus it fell within the range of matters reserved to Article III courts under the holding of *Northern Pipeline*.

Thomas, 473 U.S. at 587. *Crowell* is a workers' compensation case. Furthermore, the statement is directly contrary to the Colorado Revised Statutes which expressly acknowledge that the workers' compensation act replaces rights that existed at common law. Colo. Rev. Stat. § 8-40-102(1) (2009). The *Dee Enterprises* case is based on the fallacy that the workers' compensation act did not replace common law rights. *Dee Enterprises*, 89 P.3d at 436. The orders below are based on a complete misinterpretation of federal law and therefore sufficient grounds for

certiorari, as stated in Supreme Court Rule 10, have been satisfied. *Also see Three Affiliate Tribes v. World Engineering P.C.*, 467 U.S. 138, 152 (1984).

The timelines urged by Respondents on page seventeen of the opposition brief are irrelevant because 1) the timelines could apply to judges in the judicial branch as easily as they apply to executive branch judges and 2) the timelines have been ruled to be discretionary and not mandatory. *Aviado v. ICAO*, 228 P.3d 177 (Colo. App. 2009). The placement of administrative law judges in an executive branch agency separate from the division of workers' compensation and outside of the judicial branch serves only one purpose: To deny the people of Colorado the selection and retention provisions of the Colorado Constitution regarding judges who hear workers' compensation cases. The placement of the judges in the separate executive branch agency is wholly irrelevant to the state's objective of quick and efficient delivery of benefits.

Colorado's judicial branch has actively politically opposed workers' compensation judges being in the judicial branch. Respondents failed to respond to the certified transcripts of legislative proceedings that show the judicial branch's open partiality against having workers' compensation judges in the judicial branch. Respondents simply focused on other facts that also show Colorado's judicial branch's bias in this matter. Respondents argued that the other facts are hearsay, but the facts were accepted as true by the Colorado Court of Appeals. The rulings below are not

fair and impartial determinations but are merely examples of Colorado's judicial branch improperly imposing its political will on the People of the State of Colorado.

CONCLUSION

This Court has ruled that if a state court's judgment is based on an incorrect perception of federal law, it is this Court's practice to vacate the state court's judgment. *Three Affiliate Tribes v. World Engineering P.C.*, 467 U.S. 138, 152 (1984). This is such a case. The judgments below are based on an incorrect perception of this Court's holdings in *Crowell, Northern Pipeline and Thomas, supra*. Therefore, certiorari should be granted.

Respectfully submitted,

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WORKERS' COMPENSATION FIFTY-STATE SURVEY						
	Hearing in Executive Branch?		Appeal in Executive Branch?		Judicial Review	
	Hearing is in agency that regulates work comp	Hearing is in non-work comp agency	Appeal is in agency that regulates work comp	Appeal is in non-work comp agency	De Novo	Other
AL	No agency hearings or appeals. Workers' compensation cases are only heard in the judicial branch. Ala. Code §25-5-88 (2009)					
AK	Alaska Stat. §23.30.005 (2009)		Alaska Stat. §23.30.007 (2009)			Alaska Stat. §23.30.129 (2009)
AZ	Ariz. Rev. Stat. §§23-941, 23-101, 23-921, 23-108.02 (2009)		Ariz. Rev. Stat. §23-943 (2009)			Ariz. Rev. Stat. §23-946 (2009)
AR	Ark. Code Ann. §§11-9-207, 11-9-205(6), 11-9-201 (2009)		Ark. Code Ann. §§11-9-704(6)(A), 11-9-711 (2009)			Ark. Code Ann. §11-9-711 (6), (3), (4) (2009)
CA	Cal. Lab. Code §§110, 5301, 5310, 5304, 5315 (2009)		Cal. Lab. Code §126 (2009)			Cal. Lab. Code §5952 (2009)
CO		Colo. Rev. Stat. §§8-43-201, 24-30-1001 (2009)		Colo. Rev. Stat. §8-1-102 (2009)		Colo. Rev. Stat. §§8-43-307, 8-43-308 (2009)
CT	Conn. Gen. Stat. §§31-278, 31-275(1)(G) (2009)		Conn. Gen. Stat. §§31-2806, 31-301 (2009)			Conn. Gen. Stat. §31-301b (2009)
DE	Del. Code Ann. tit. 19 §§2301A, 2301B, 2345 (2009)		No appeal within agency. Appeal directly to superior court. Del. Code Ann. tit. 19, §§2349, 2350 (2009)			Del. Code Ann. tit. 19 §§2349, 2350 (2009)

	Hearing in Executive Branch?		Appeal in Executive Branch?		Judicial Review	
	Hearing is in agency that regulates work comp	Hearing is in non-work comp agency	Appeal is in agency that regulates work comp	Appeal is in non-work comp agency	De Novo	Other
FL		Fla. Stat. §§440.45, 20.22 (2009)	No appeal within agency. Appeal directly to district court of appeal. Fla. Stat.§440.271, (2009)			Fla. Stat. §440.271 (2009)
GA	Ga. Code Ann. §§34-9-100, 34-9-102 (2009)		Ga. Code Ann. §34-9-103 (2009)			Ga. Code Ann. §§34-9-103, 34-9-105 (2009)
HI	Haw. Rev. Stat. §386-73 (2009)		Haw. Rev. Stat. §§386-87, 386-71 (2009)			Haw. Rev. Stat. §386-88 (2009)
ID	Idaho Code Ann. §§72-707, 72-501, 72-506 (2009)		No appeal within agency. Appeal directly to supreme court. Idaho Code Ann. §72-724 (2009)			Idaho Code Ann. §72-724 (2009)
IL	820 Ill. Comp. Stat. 305/18 (2009)		820 Ill. Comp. Stat. 305/19 (2009)			820 Ill. Comp. Stat. 305/19 (2009)
IN	Ind. Code §§22-3-1-1, 22-3-1-3 (2009)		Ind. Code §22-3-4-8 (2009)			Ind. Code 22-3-4-8 (2009)
IA	Iowa Code §§86.11, 86.17 (2009)		Iowa Code §86.24 (2009)			Iowa Code §86.26 (2009)
KS	Kan. Stat. Ann. §44-551 (2009)		Kan. Stat. Ann. §44-555c (2009)			Kan. Stat. Ann. §44-556 (2009)
KY	Ky. Rev. Stat. Ann. §342.275 (2009)		Ky. Rev. Stat. Ann. §342.215 (2009)			Ky. Rev. Stat. Ann. §342.290 (2009)

	Hearing in Executive Branch?		Appeal in Executive Branch?		Judicial Review	
	Hearing is in agency that regulates work comp	Hearing is in non-work comp agency	Appeal is in agency that regulates work comp	Appeal is in non-work comp agency	De Novo	Other
LA	La. Rev. Stat. Ann. §23:1310.1 (2009)		No appeal within agency. Appeal directly to circuit court of appeal. La. Rev. Stat. Ann. §23:1310.5 (2009)			La. Rev. Stat. Ann. §23:10 (2009)
ME	Me. Rev. Stat. Ann. tit. 39-A, §§152, 318 (2009)		Me. Rev. Stat. Ann. tit. 39-A, §320 (2009)			Me. Rev. Stat. Ann. tit. 39-A, §322 (2009)
MD	Md. Code Ann. Lab. & Empl. §§9-308, 9-304 (2009)		No appeal within agency. Appeal directly to circuit court. Md. Code Ann. Lab. & Empl. §9-737 (2009)		Md. Code Ann. Lab & Empl. §9-737 Md.R. 7-201 et seq. *See Shady Grove Adventist Hospital, et.al,* 993A.2d 120 (Md. App. 2010)	
MA	Mass. Gen. Laws ch. 23E, §3; ch. 152, §11B (2009)		Mass. Gen. Laws ch. 23E, §§4, 5; ch. 152, §11C (2009)			Mass. Gen. Laws ch. 30A, §14 (2009)
MI	Mich. Comp. Laws §§418.206, 418.841 (2009)		Mich. Comp. Laws §418.859a (2009)			Mich. Comp. Laws §418.861 (2009)

	Hearing in Executive Branch?		Appeal in Executive Branch?		Judicial Review	
	Hearing is in agency that regulates work comp	Hearing is in non-work comp agency	Appeal is in agency that regulates work comp	Appeal is in non-work comp agency	De Novo	Other
MN		Minn. Stat. §§176.341, 14.48 (2009)		Minn. Stat. §§175A.01, 176.421 (2009)		Minn. Stat. §176.471 (2009)
MS	Miss. Code Ann. §§71-3-55, 71-3-85 (2009)		No appeal within agency. Appeal directly to circuit court. Miss. Code Ann. §71-3-51 (2009)			Miss. Code Ann. §71-3-51 (2009)
MO	Mo. Rev. Stat. §§287.550, 287.610 (2009)		Mo. Rev. Stat. §287.470 (2009)			Mo. Rev. Stat. §287.490 (2009)
MT	Mont. Code Ann. §§39-71-2901, 39-71-2902, 2-15-1707 (2009)		No appeal within agency. Appeal directly to supreme court. Mont. Code Ann. §39-71-2904 (2009)			Mont. Code Ann. §39-71-2904 (2009)
NE	No agency hearings or appeals. Workers' compensation cases are only heard in the judicial branch. Neb. Rev. Stat. §48-152 (2009)					
NV		Nev. Rev. Stat. §§616C.310, 616C.295, 232.219 (2009)	Nev. Rev. Stat. §616C.340 (2009)			Nev. Rev. Stat. §616C.370 (2009)
NH	N.H. Rev. Stat. Ann. §281-A:42-b (2009)		N.H. Rev. Stat. Ann. §281-A:42-a (2009)			N.H. Rev. Stat. Ann. §281-A:43 (2009)
NJ	N.J. Stat. Ann. §34:15-49 (2009)		No appeal within agency. Appeal directly to appellate division of superior court. N.J. Stat. Ann. 34:15-66 (2009)			N.J. Stat. Ann. §34:15-66 (2009)

	Hearing in Executive Branch?		Appeal in Executive Branch?		Judicial Review	
	Hearing is in agency that regulates work comp	Hearing is in non-work comp agency	Appeal is in agency that regulates work comp	Appeal is in non-work comp agency	De Novo	Other
NM	N.M. Stat. §52-5-2 (2009)		No appeal within agency. Appeal directly to court of appeals. N.M. Stat. §52-5-8 (2009)			N.M. Stat. §52-5-8 (2009)
NY	N.Y. Workers' Comp. Law §142 (2009)		N.Y. Workers' Comp. Law §23 (2009)			N.Y. Workers' Comp. Law §23 (2009)
NC	N.C. Gen. Stat. §§97-83, 97-91 (2009)		N.C. Gen. Stat. §97-85 (2009)			N.C. Gen. Stat. §97-86 (2009)
ND	N.D. Cent. Code §65-01-16 (2009)		N.D. Cent. Code §65-01-16 (2009)			N.D. Cent. Code §65-10-02 (2009)
OH	Ohio Rev. Code Ann. §§4123.08, 4123.511 (2009)		Ohio Rev. Code Ann. §4123.511 (2009)		Ohio Rev. Code Ann. §4123.512 (2009)	
OK	No agency hearings or appeals. Workers' compensation cases are only heard in the judicial branch. Okla. Stat. tit. 85, §1.2 (2009)					
OR	Or. Rev. Stat. §§656.283, 656.708 (2009)		Or. Rev. Stat. §656-295 (2009)			Or. Rev. Stat. §§656.298, 183.482 (2009)
PA	77 Pa. Stat. Ann. §§710, 27, 2501 (2009)		77 Pa. Stat. Ann. §710.1 (2009)			42 Pa. Stat. Ann. §933 (2009)
RI	No agency hearings or appeals. Workers' compensation cases are only heard in the judicial branch. R.I. Gen. Laws §28-30-1 (2009)					

	Hearing in Executive Branch?		Appeal in Executive Branch?		Judicial Review	
	Hearing is in agency that regulates work comp	Hearing is in non-work comp agency	Appeal is in agency that regulates work comp	Appeal is in non-work comp agency	De Novo	Other
SC	S.C. Code Ann. §§42-3-20, 42-17-40 (2009)		S.C. Code Ann. §42-17-50 (2009)			S.C. Code Ann. §42-17-60 (2009)
SD	S.D. Codified Laws §§62-7-12, 62-2-5 (2009)		S.D. Codified Laws §62-7-16 (2009)			S.D. Codified Laws §§62-7-19, 1-26-36 (2009)
TN	No agency hearings or appeals. Workers' compensation cases are only heard in the judicial branch. Tenn. Code Ann. §50-6-225 (2009)					
TX	Tex. Lab. Code Ann. §§402.00128, 402.0215, 410.152 (2009)		Tex. Lab. Code Ann. §410.202 (2009)		Regarding compensability or income or death benefits Tex. Lab. Code Ann. §410.301 et. seq. (2009)	Issues other than compensability or income or death benefits Tex. Lab. Code Ann. §410.255 et. seq. (2009)
UT	Utah Code Ann. §§34A-1-202, 34A-1-104 (2009)		Utah Code Ann. §§34A-1-205, 34A-1-303 (2009)			Utah Code Ann. §§34A-1-305, 34A-1-306 (2009)
VT	Vt. Stat. Ann. tit. 21, §§663, 664 (2009)		No appeal within agency. Appeal directly to superior court. Vt. Stat. Ann. tit. 21 §§669, 670 (2009)		Vt. Stat. Ann. tit. 21 §§670, 671 (2009)	
VA	Va. Code Ann. §§65.2-201, 65.2-700, 65.2-704 (2009)		Va. Code Ann. §§65.2-704, 65.2-705 (2009)			Va. Code Ann. §65.2-706 (2009)

	Hearing in Executive Branch?		Appeal in Executive Branch?		Judicial Review	
	Hearing is in agency that regulates work comp	Hearing is in non-work comp agency	Appeal is in agency that regulates work comp	Appeal is in non-work comp agency	De Novo	Other
WA	Wash. Rev. Code §51.52.050 (2009)		Wash. Rev. Code §§52.52.010, 52.52.106 (2009)		Wash. Rev. Code §§51.52.110, 51.52.115 (2009)	
WV	W. Va. Code §§23-1-5, 23-5-8 (2009)		W. Va. Code §23-5-11 (2009)			W. Va. Code §23-5-15 (2009)
WI	Wis. Stat. §102.17, 102.18 (2009)		Wis. Stat §102.18 (2009)			Wis. Stat. §102.23 (2009)
WY	Wyo. Stat. Ann. §§9-2-2201, 27-14-602 (2009) Hearings construed to be in workers' compensation division. *State of Wyoming, ex rel. Wyoming Workers' Compensation Division v. Halstead*, 795 P.2d 760, 772 (Wyo. 1990) (Justice Rooney specially concurring).		No appeal within agency. Appeal directly to district court. Wyo. Stat. Ann. §27-14-602 (2009)			Wyo. Stat. Ann. §§27-14-602, 16-3-114 (2009)